

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

RICHARD CARLEY, <i>Pro Se</i> ,)	Case No.: 1:06 CV 922
)	
Petitioner)	JUDGE SOLOMON OLIVER, JR.
)	
v.)	
)	
STUART HUDSON,)	
)	
Respondent)	<u>ORDER</u>

On April 17, 2006, Petitioner Richard Carley (“Petitioner” or “Carley”), *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition,” ECF No. 1), pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court conviction¹ for six counts of aggravated murder with felony murder, mass murder, and firearm specifications. (Resp’t’s Ex. 5, ECF No. 18-26.) In his Petition, Carley alleged five grounds for relief: ineffective assistance of trial counsel and unknowing and involuntary guilty plea; prosecutorial misconduct; and three grounds of ineffective assistance of appellate counsel. (Petition at 8.)

This court referred the case to Magistrate Judge Nancy A. Vecchiarelli for preparation of a Report and Recommendation. (ECF No. 11.) On April 27, 2005, the Magistrate Judge granted

¹ After the jury trial and prior to the mitigation hearing, Petitioner entered a plea agreement in which he pled guilty to two counts of murder with three-year firearm specifications. (Resp’t’s Ex. 6, ECF No. 18-27; Resp’t’s Ex. 49, ECF No. 18-70.)

Petitioner's Motion to Amend Habeas Petition (Order, ECF No. 15), adding a sixth ground for relief, which alleged that Petitioner's sentence was unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Blakely v. Washington*, 542 U.S. 296 (2004). (ECF No. 9.) On August 16, 2007, Respondent Stuart Hudson, the Warden of the Mansfield Correctional Institution ("Respondent" or "Hudson") filed his Return of Writ. (ECF No. 18.) Petitioner filed his Traverse on August 31, 2007. (ECF No. 21.)

On December 5, 2007, the Magistrate Judge submitted her Report and Recommendation on April 15, 2008, recommending that Carley's Petition be dismissed. (ECF No.27.) Specifically, the Magistrate Judge made the following findings: (1) ground one was meritless because Carley waived his claim to ineffective assistance of trial counsel and he failed to show that his guilty plea was unknowing or involuntary; (2) ground two was meritless because Carley waived his prosecutorial misconduct claim when he pled guilty; (3) grounds three, four, and five were procedurally defaulted; and (6) ground six is meritless because *Apprendi* and *Blakely* are inapplicable where Carley agreed to a sentence as part of a plea agreement, and because Carley waived the right to appeal his sentence by entering into a plea agreement. (*Id.*)

Petitioner's objections to the Report and Recommendation were initially due on April 29, 2008. On April 28, 2008, the court granted Petitioner a 30-day extension of time to file objections. (Order [non-document].) Due to the Memorial Day holiday, Petitioner's objections were due May 29, 2008. As of the date of this Order, Petitioner has not filed any objections to the Report and Recommendation. By failing to do so, he has waived the right to appeal the Magistrate Judge's recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

The court finds, after careful review of the Magistrate Judge's Report and Recommendation and all other relevant documents, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 27.)

Consequently, Carley's Petition (ECF No. 1) is hereby denied, and final judgment is entered in favor of Respondent. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

May 30, 2008